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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

PETER BOLGAR,

Plaintiff and Appellant,

v.

HARRIS PROPERTIES, INC. et al.,

Defendants and Respondents.

B208257

(Los Angeles County
Super. Ct. No. BC372736)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Mary Ann Murphy, Judge. Affirmed in part, reversed in part, and remanded with
directions.

Peter Bolgar, in pro. per., for Plaintiff and Appellant.

Hatton, Petrie & Stackler and Michael J. Wright for Defendants and Respondents
Harris Properties, Inc. and Glen Donald Apartments, Inc.

Peter Bolgar filed suit against a common interest development, its property manager, and insurance agencies which had secured insurance for the common interest development. He appeals from the judgment of dismissal entered after the trial court sustained demurrers to his second amended complaint without leave to amend on the grounds that his complaint was uncertain and failed to state a claim. (Code Civ. Proc., § 430.10, subds. (e) & (f).) We conclude that the complaint stated facts to support an individual claim for breach of the development's governing documents and statutory violations against the common interest development. Accordingly, we affirm in part and reverse in part the judgment of dismissal and remand for further proceedings.

BACKGROUND

On June 14, 2007, Bolgar filed suit against the board of directors of a common interest development, Glen Donald Apartments, Inc. (Glen Donald Apartments), its management company, Harris Properties, Inc., and two of the development's insurance agents, Pro-Tech Insurance Services, Inc. and Schrimmer-Cavanagh Insurance Agency, Inc.¹ Bolgar alleged that he is the owner of a one bedroom unit in Glen Donald Apartments, a 94-unit common interest development in Los Angeles.²

On December 27, 2007, Bolgar filed a second amended, and the operative, complaint in this case. As with his prior complaints, the second amended complaint alleged that vendors overcharged the development for service, performed unnecessary services and that the development and its management permitted these practices because certain board members and management company personnel were accepting kickbacks

¹ Schrimmer-Cavanagh Insurance Agency, Inc. had not been properly served with the complaint and the trial court dismissed it from the action. We affirmed in an unpublished opinion. (*Bolgar v. Schrimmer-Cavanagh Insurance Agency, Inc.* (Dec. 23, 2008, B205702) [nonpub. opn.])

² A "common interest development" includes a community apartment project, a condominium project, a planned development, and a stock cooperative. (Civ. Code, § 1351, subd. (c).)

from the vendors. The complaint also alleged that the common interest development charged him more than any other resident in monthly fees and special assessments. Bolgar's complaint sought compensatory and punitive damages only for himself. The defendants demurred on the grounds that the second amended complaint was uncertain, unintelligible and failed to state a cause of action. (Code Civ. Proc., § 430.10, subds. (e) & (f).) The trial court sustained the demurrers to Bolgar's second amended complaint without leave to amend and dismissed the action.

Bolgar filed a motion for reconsideration which the trial court denied, and a motion to vacate the judgment which the trial court likewise denied. Bolgar appeals from the ensuing judgment of dismissal.³

DISCUSSION

In determining whether Bolgar properly stated a claim for relief, we treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. We give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

We liberally construe the allegations of the complaint with a view to substantial justice. (*McHugh v. County of Santa Cruz* (1973) 33 Cal.App.3d 533, 544.) If the facts alleged show entitlement to relief under any possible legal theory, the dismissal must be reversed. (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 672.)

³ Pro-Tech Insurance Services, Inc. did not file a respondent's brief on appeal. The court may thus decide the appeal on the record, and from the other briefs filed and oral argument in the matter. (See Cal. Rules of Court, rule 8.220(a)(2).)

Bolgar's second amended complaint contained factual allegations that defendant, Glen Donald Apartments, the common interest development, required him to pay a monthly fee of over \$600, although it required others to pay only \$125. The complaint also alleged that Glen Donald Apartments charged him more for special assessments than it charged the owners of any other unit although all the other units were identical in size to his. These facts are sufficient to allege a breach of the covenants of the governing documents and statutory violations.

All owners are bound by the declaration and bylaws governing a common interest development. (Civ. Code, §§ 1351, 1353; *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 368, fn. 1.) Civil Code section 1354, subdivision (a) authorizes enforcement actions for breaches of governing documents and provides: "The covenants and restrictions in the declaration shall be enforceable equitable servitudes, unless unreasonable, and shall inure to the benefit of and bind all owners of separate interests in the development. Unless the declaration states otherwise, these servitudes may be enforced by any owner of a separate interest or by the association, or by both."

Unless the governing documents provide otherwise, monthly assessments and special assessments must be imposed equally on a per unit basis. This is based on the general rule of Civil Code section 1362 which states that "[u]nless the declaration otherwise provides, in a condominium project, or in a planned development in which the common areas are owned by the owners of the separate interests, the common areas are owned as tenants in common, in equal shares, one for each unit or lot." (See also, *Cebular v. Cooper Arms Homeowners Assn.* (2006) 142 Cal.App.4th 106, 120 [noting the general rule of equal assessments for every unit]; and see, Civ. Code, § 1365, subd. (a)(2)(D) [generally deficiencies in reserve funding must be expressed "on a per unit basis" calculated by subtracting the amount of cash reserves from the amount of the deficiency "and then dividing the result by the number of separate interests within the association"].)

Governing documents may, however, alter the basis for calculating the monthly fees and special assessments. For example, governing documents may specify that monthly fees and special assessment are instead determined by the size or type of ownership interest. (See, e.g., Civ. Code, § 1365.2.5 [sample assessment and reserve funding disclosure form noting the distinction]; Civ. Code, § 1365, subd. (a)(2)(D) [assessments should be equal “except that if assessments vary by the size or type of ownership interest, then the association shall calculate the current deficiency in a manner that reflects the variation”]; see also, 9 Miller & Starr, (3d ed. 2001) Common Interest Developments, § 25B:87, p. 25B-163 [“Regular assessments must ordinarily be allocated equally among all the units subject to assessment” with possible exceptions based on square footage, or for units receiving a disproportionate share of the value of common services supplied by the association].)

Because the facts alleged show a possible claim for breach of the governing documents and statutory violations, the trial court abused its discretion in sustaining the demurrer without leave to amend as to defendant Glen Donald Apartments. (*Blank v. Kirwan*, *supra*, 39 Cal.3d at p. 318; *Crowley v. Katleman*, *supra*, 8 Cal.4th at p. 672.) The complaint, however, does not allege that either Harris Properties, Inc. or Pro-Tech Insurance Services, Inc. had any authority to set the monthly fee or special assessments. Moreover, claims of overcharging the development, performing unnecessary services for the development, and engaging in illegal kickback schemes resulting in higher costs for the development, are all claims properly belonging to Glen Donald Apartments and not claims for which an individual owner may pursue damages on his own behalf. Accordingly, the court correctly sustained the demurrers of Harris Properties, Inc. and Pro-Tech Insurance Services, Inc. and entered a dismissal in their favor.

DISPOSITION

The judgment is affirmed with respect to Harris Properties, Inc. and Pro-Tech Insurance Services, Inc. The judgment is reversed and the matter is remanded to the trial court with directions to vacate its order sustaining Glen Donald Apartments' demurrer without leave to amend and to enter a new and different order overruling its demurrer. Each side shall bear its own costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

WEISBERG, J.*

* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.